

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 87**

and

20-CB-151336

EXEMPLAR ENTERPRISES, INC.

Jason Wong, Esq.,
for the General Counsel.
Kevin Brunner, Esq.,
for the Respondent.
Thomas Scott Stewart, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. Service Employees International Union, Local 87 (Respondent or SEIU Local 87) is accused of violation of Section 8(b)(1)(A) of the National Labor Relations Act (the Act)¹ by making a statement that unless an employee signed a union authorization card authorizing SEIU Local 87 to represent them, it would not help the employee in the future if the employee had any problems. This case was tried in San Francisco, California on November 12, 2015.² Exemplar Enterprises, Inc. (Exemplar) filed the charge on April 30 and the General Counsel issued the complaint on August 10.

¹ Sec. 8(b)(1)(A), 29 U.S.C. §158(b)(1)(A) of the Act provides, inter alia, it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in Sec. 7, i.e., that right to self-organization, to form, join, or assist labor organizations and to engage in other concerted activities for mutual aid or protection and to refrain from any or all such activities.

² All dates are in 2015 unless otherwise referenced.

On the entire record,³ including my observation of the demeanor of the witnesses,⁴ and after considering the brief filed by counsel for the General Counsel, the following findings of fact and conclusions of law are made.

Jurisdiction and Labor Organization Status

Exemplar, a California corporation, is engaged in the business of providing janitorial services to commercial and Federal Government customers. During the fiscal year ending May 31, 2014, it provided janitorial services valued in excess of \$50,000 directly to customers located outside the state of California. At all material times, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. SEIU Local 87 is a labor organization within the meaning of Section 2(5). Thus this dispute affects interstate commerce and the Board has jurisdiction of this case pursuant to Section 10(a) of the Act.

Facts

Exemplar provides janitorial services in downtown San Francisco for GSA⁵ at 630 Sansome, 555 Battery, and 50 UN Plaza. After requesting that Exemplar sign its contract with the San Francisco Maintenance Contractors Association and engaging in picketing directed at Exemplar in February, March, and April, on April 13, SEIU Local 87 filed a petition with the NLRB to represent janitorial employees employed by Exemplar at its locations in downtown San Francisco.

On April 22, Exemplar janitorial employee Cuixia Rong, who worked at 50 UN Plaza, received a phone call from Hung Chi Szeto, SEIU Local 87 secretary treasurer. According to Rong, Szeto said, “Oh, you need to come and sign the union card because we are about to win. So because we are about to win, if you don’t come to sign the card and in case in the future if you have any trouble we are not able to help you.” They discussed wages and Rong stated that she was busy. Szeto responded, “Oh, I know you are very busy. Whenever you have time, please come over and sign the card.” Rong recalled that Szeto further stated, “if I don’t sign the card right now and if they win the case and then other union members will say, ‘Oh, this person is bad because she didn’t sign the card.’ And then in case in the future if you need help, they are not able to help you.”

³ Pursuant to the General Counsel’s motion to correct the transcript, the following corrections are made: p. 48, line 6, “Yes” is changed to “No;” p. 48, line 12, “did you a become” is changed to “did you become;” p. 48, line 13, “I had” is changed to “I have;” p. 49, line 8, “after the noon” is changed to “afternoon;” p. 50, line 20, “seeing” us changed to “I seen;” p. 50, line 21-22, “15-16” is changed to “50 to 60;” and p. 51, line 14 “I worked at Macy’s” is changed to “I work at Macy’s.”

⁴ There is little dispute with regard to the facts of this case. However, when necessary, credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

⁵ GSA or the General Services Administration is an independent agency of the United States. It supplies products and communications for the U. S. Government.

Szeto recalled the conversation with Rong starting with his asking her to sign the card. He recalled that Rong brought up something about the benefit of union membership stating that union members made \$13.45 an hour and she earned \$18 an hour. Szeto countered that the union provided benefits. Szeto recalled stating, “We talk you have to be a member before we can help her, because if not we can’t do much.”

Analysis

In *United Steel Workers of America Local 1397, AFL-CIO (United States Steel Corp.)*, 240 NLRB 848 (1979), the Board held:

In judging whether or not [a union representative's] statements violated Section 8(b)(1)(A) of the Act the test of misconduct is not what [he] may have subjectively intended by his comments, nor whether any employee was in fact coerced or intimidated by the remarks. Rather, the test is whether the alleged offender engaged in conduct which tends to restrain or coerce employees in the rights guaranteed them in the Act We have likewise held that union threats to employees that the union would not represent them also violates [Section 8(b)(1)(A)], particularly when made by a union officer with the apparent capability of effectuating the actions threatened. . . Such is the case before us.

Section 7 of the Act specifically gives employees the right to refrain from joining a union. However, a union, which is the exclusive bargaining representative of all employees in the unit, must represent all members of the bargaining unit and diligently pursue their meritorious grievances whether those employees are dues-paying members of the Union or not. *Vaca v. Sipes*, 386 U.S. 171, 190-193 (1967) (union breaches its duty of fair representation when its actions toward a member of bargaining unit are arbitrary, discriminatory, or in bad faith). Statements that a union will not process grievances for nonmembers constitute threats in violation of Section 8(b)(1)(A). See, e.g., *Letter Carriers Local 233 (Postal Service)*, 311 NLRB 541 (1993) (Union established and maintained an unlawful policy against representing nonmembers equally); *Teamsters Local No. 667 (Owens-Corning)*, 228 NLRB 398 (1977) (Union told employees it would not represent them unless they joined the union).

There is essentially no credibility conflict between Rong and Szeto. Both testified that Szeto said Rong had to join the Respondent in order for it to help her. Given the framework of the law, Szeto’s statement that SEIU Local 87 would not assist Rong unless she became a member, is unlawful. That is, the statement that unless Rong signed a union authorization card, Respondent would not assist her constitutes a breach of the duty of fair representation to represent all employees whether or not they are dues-paying members.⁶ Thus, I find that by telling Rong that SEIU Local 87 would not help her with problems in the future unless she signed a union authorization card, Respondent restrained and coerced Rong in violation of Section 8(b)(1)(A).

⁶ Moreover, even were the statement considered ambiguous, that is, such that Szeto was attempting to state that without sufficient authorization cards, Respondent would not be able to obtain representative status, any ambiguity must be resolved against Respondent as the proponent of the statement.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

The Respondent, Service Employees International Union, San Francisco, California, its officers, agents, and representatives, shall

1. Cease and desist from

- (a) Telling an employee that SEIU Local 87 would not help her with problems in the future unless she signed a union authorization card.
- (b) In any like or related manner restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Within 14 days after service by the Region, post at its union office in San Francisco, California, copies of the attached notice marked “Appendix.”⁸ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Exemplar has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Exemplar at any time since April 22, 2015.

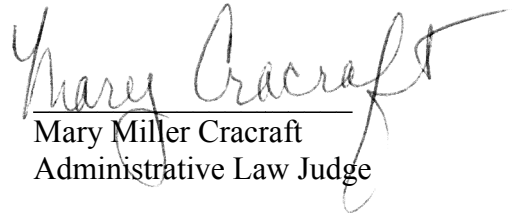
⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁸ If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board.”

- (b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated, Washington, D.C. January 5, 2016

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Mary Miller Cracraft
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT tell you that SEIU Local 87 will not help with your problems in the future unless you sign a union authorization card.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL satisfy our duty of fair representation to all employees.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 87

(Respondent)

Dated _____ By _____
(Representative) (Title)

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CB-151336 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, D.C. 20570-0001, or by calling (202) 273-1940.



The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400
San Francisco, California 94103-1735
Hours: 8:30 a.m. to 5 p.m.
415-356-5130

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (510) 637-3253.